IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 19 OF 2004

State
through Public Prosecutor,
High Court of Bombay at Panaji. ... Appellant

versus

Vishwanath Naik,
r/o Dhuler, Dharbandora,
Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. J. A. Lobo, Advocate under the Legal Aid Scheme for the Respondent.

CORAM : V. M. KANADE, J.

DATE : 9TH JUNE, 2005.

ORAL JUDGMENT

The Appellant/State of Goa has filed this Criminal Appeal through the learned Public Prosecutor, High Court of Bombay, Panaji, challenging the Judgment and Order passed by the Judicial Magistrate, First Class, Ponda, in Criminal Case No.

77/S/2002/C dated 6th November, 2003. By the said Judgment and Order the trial Court convicted the Respondent/Accused for the offences punishable under Sections 279 and 304-A of the Indian Penal Code and sentenced him to pay a fine of Rs.1000/- under Section 279 of the Indian Penal Code and in default to suffer Simple Imprisonment for a period of two weeks. The trial Court further directed that they should pay a fine of Rs.2000/- under Section 304-A and in default to undergo Simple Imprisonment for a period of one month. The State has preferred this Appeal for enhancement of the sentence imposed by the trial Court.

2. Heard Mr. S. N. Sardessai, the learned Public Prosecutor appearing on behalf of the State and Mr. J. A. Lobo, learned Counsel appearing on behalf of the Respondent.

3. The brief facts are that on 12-5-2002 between 9.00 a.m. to 9.30 p.m. an accident took place at the junction of the Nagzar Curti road and a truck which was driven by the Respondent/Accused dashed against the scooter which was driven by the deceased. The driver of the truck fled away from the scene of offence. Thereafter, he was arrested. The person driving the scooter succumbed to his injuries on the way to the hospital.

4. The prosecution examined in all 8 witnesses one of which P.W.3, Abdul Razak Khan, is the eye witness who had seen the accident. A sketch map has been filed by the prosecution. From the evidence of the Investigating Officer it can be seen that the truck was proceeding from Khandepar to Farmagudi which is a main road. There is an internal road intersecting this main road which goes to the milk dairy. The scooter was on the internal road and while he was crossing the main road the left side of the truck dashed the scooter as a result the driver of the scooter received injuries on his stomach, thigh and knee.

5. It appears from the record that the truck driver had applied his brakes nearly 25 metres before the junction and it does appear from this evidence that the driver of the scooter was not cautious enough while crossing the main road. The trial Court also has accepted this fact and has come to a conclusion and has observed that it was essential and necessary for the driver of the scooter to have reduced the speed near the junction.

6. While awarding the sentence, the trial Court has taken this fact into consideration while imposing fine on the Accused. In my view, the trial Court has given a well reasoned order and has given clear and cogent reasons while awarding the sentence. Though, it does appear that the sentence of imposition of fine which is awarded by the trial Court is

shocking disproportionately considering the fact that the scooterist died in the accident yet after having taken into consideration the facts and circumstances of the case particularly the fact which does indicate that the scooterist had not stopped near the junction while crossing the main road and had proceeded further to cross it without finding out whether any vehicle was passing on the main road it is clear that the truck driver was not at fault and had tried his utmost to save the scooterist. The truck driver on the other hand has stated in his Statement under Section 313 that it was rainy season and the scooter skidded due to rains and though he tried to save the scooterist yet the left hand side of his truck dashed the scooter. The map which is produced on record as also the evidence of P.W.3, Abdul Razak Khan also supports this defence given by the Accused in his Statement under Section 313. This is also borne out from the panchanama which is made which indicates that the left hand side front bumper of the truck was damaged. Further, it can be seen that the truck driver had applied brakes nearly 25 metres before the junction and thus was cautious enough to slow down his vehicle. Ordinarily, it is the duty of a person crossing an internal road to be more cautious as there is always a heavy traffic on the main road. It appears that the scooterist did not take that precaution while crossing the main road. Under these circumstances, in my view, the sentence which is imposed by the trial Court does not appear to be disproportionate on the contrary it can very well be argued that the

Accused will be entitled to be acquitted for the offences with which he is charged. The trial Court, therefore, in my view, has properly assessed the evidence and on the basis of the evidence adduced by the prosecution has imposed a sentence of fine only. Thus, the submission made by the learned Public Prosecutor appearing on behalf of the State cannot be accepted.

7. The learned Counsel has relied on two Judgments of the Supreme Court reported in **Rattan Singh** v. **State of Punjab**(AIR 1980 SC 1984) and **State of Mysore** v. **Bantra Kunjanna** (1960 Cri.L.J. 1965). There cannot be any dispute regarding the ratio laid down by the Supreme Court in the said Judgments. However, the ratio of the said cases is not applicable to the facts of the present case. In the result Criminal Appeal is dismissed.

V. M. KANADE, J.

RD.